

certainly at least misleading. I have asked him to correct the record.

Delegate Hardwicke.

DELEGATE HARDWICKE: As I understand the question, Delegate Hargrove asked whether or not in a sovereign immunity litigation the General Assembly could provide that there would be no right to trial by jury in such instance, notwithstanding the provisions of section 1.13, and section 1.13. These appear to give a very broad right to a trial by jury in all civil proceedings at law in this State, and it would appear that the General Assembly could not curtail this right under section 1.13, even in a sovereign immunity action. I believe that that should be the answer to your question.

THE CHAIRMAN: Delegate Hardwicke, your further clarification now raises a further doubt in the mind of the Chair, because of the discussion concerning the jury trial case, that the right of trial by jury of all issues of fact in civil proceedings and law meant in effect in those cases where the right to trial by jury existed at common law. If that be true, and if the right of sovereign immunity existed at common law so that there was no right to sue the sovereign, might there not be some contention at least that the right of trial by jury would not be absolutely protected under section 1.13?

I am not stating that that is a conclusion. I am just raising the question.

Delegate Hardwicke.

DELEGATE HARDWICKE: I do not think that the matter is completely free from doubt, Mr. Chairman. As I understand it, we were not intending to create a right of action in this matter. We were only intending to remove a defense which the State could plead and consequently since we are not creating a right of action, it appears to me that the jury trial would pertain.

THE CHAIRMAN: Very well.

Delegate James.

DELEGATE JAMES: Mr. Chairman, this worries me, because my interpretation of this provision was to the effect that this would permit Maryland to pass a Maryland tort claims act and to adopt such procedures as might be reasonable and proper under all the circumstances, and that the State would not be bound by the normal requirements of the Bill of Rights. To learn that this is in effect a provisions which

calls for the State to go into court and in all circumstances to be treated as a litigant, like others, is a rather shocking interpretation, and I really cannot agree with it.

I certainly hate to see the record show that that is the proper interpretation of this section.

There are many areas. I happen to have introduced a Maryland tort claims bill which passed back in the early fifties but which was vetoed by the governor. I recall problems. One is whether you can place a dollar limitation upon the verdict; another would be whether you can handle claims up to a certain amount for administrative procedures only, and after you get beyond that dollar amount, what type of trial do you have? Does it apply, for instance, to the military types of injuries?

There are all sorts of problems, and certainly it would seem to me that to adopt the interpretation that a jury trial could not be effected would certainly be an extraordinarily radical view.

THE CHAIRMAN: Delegate James, I think that you would be attributing to Delegate Hardwicke's comment greater effect than he intended at all. It seems to the Chair that under the provision of what was Article 8, and I understand will be Article 9, section 9.07, sovereign immunity, it would be possible for the General Assembly to pass a law which would not waive sovereign immunity to suits against the State but would permit some administrative procedure, such as you have described.

I think what Delegate Hardwicke is saying was that if the sovereign immunity is waived so that the State, the legislature, permits a suit against the State in the courts, then a question may arise as to whether the legislature could prohibit a jury trial in such a suit.

This might leave open a question as to whether the General Assembly could provide for a court of claims, and, without attempting to express any final opinion on that, it would seem to me that such a court would not be a part of the judicial system and might very well be a part of the administrative setup.

Does that further clarify or confuse your question, Delegate Hargrove?

DELEGATE HARGROVE: Mr. Chairman, in relation to what Delegate Hardwicke said, I do believe in his answer that the State might be able to set up a tort claims act. You will recall that in the fed-